

## Batteese, Robert

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**From:** Randlett, Mark  
**Sent:** Thursday, July 22, 2004 5:39 PM  
**To:** Batteese, Robert  
**Cc:** Jennings, Henry; Fish, Gary  
**Subject:** RE: Spray Contracting Firm

Bob,

I understand your question to be whether a corporation owned by a sole shareholder is required to be licensed as a spray contracting firm, even though the person who owns those shares is licensed as a commercial applicator. I believe the answer is yes.

A properly formed and maintained corporation has status as a distinct legal entity, even where all of the shares of that corporation are owned by one person. A corporation is authorized by law to conduct business, including entering into contracts, in its own name. In contrast, the business of a sole proprietorship is conducted by the individual business owner. Thus, a corporation and its shareholders are, legally, different persons.

A spray contracting firm is defined as a person "employed or contracted to conduct a public or private pesticide application." It does not include individuals who are certified as commercial applicators. The term "person", as defined under the law, includes corporations. To the extent that an incorporated business is employed or contracts to provide pesticide application services it meets this definition and, because it is a separate entity, must be licensed regardless of whether its sole shareholder and employee holds a commercial applicator's license. A sole proprietorship is clearly distinguishable in this regard, as the business and the owner are one in the same and, thus, a commercial applicator's license is sufficient.

Hopefully this answers your question. Please let me know if you have any further questions or need additional detail.

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**From:** Batteese, Robert  
**Sent:** Tuesday, July 20, 2004 11:02 AM  
**To:** Randlett, Mark  
**Cc:** Jennings, Henry; Fish, Gary  
**Subject:** Spray Contracting Firm

Mark,

Did you receive a folder of old memos from Pidot and Harnett when you became our counsel? We recall receiving a memo most likely from Jeff Pidot in 1985 providing clarification on the statutory definition of "spray contracting firm". Unfortunately we haven't seen it for quite some time and exhaustive searching by Gary, Henry and myself has failed to locate it. However, we feel certain that it concluded that sole proprietor companies did not need to obtain the firm license unless they were incorporated. We have always operated with this understanding but have been challenged about the cost and why an incorporated single person company also needs to obtain the firm license (see start of my letter attached). We believe the issue is the applicator would somehow be shielded from liability when incorporated and we definitely want to be able to remove the company license if serious violations occur. Can you help us with some new language if you don't have the original memo in a neat historical file?

<< File: MeserveBrad.doc >>

Bob Batteese  
Maine Board of Pesticides Control  
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Augusta ME 04333-0028  
Tel. 207-287-2731  
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JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
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ROBERT W. SPEAR  
COMMISSIONER  
ROBERT I. BATTEESE, JR.  
DIRECTOR

July 23, 2004

Bradley E. Meserve  
Boiling Spring Landscape, Inc.  
959 New County Road  
Dayton, Maine 04005

Dear Brad:

You asked about the spray contracting firm license and I offer you the following information in bulleted form:

- The need for a firm license in addition to the applicator license was recognized by the old "Sunset Committee" that reviewed the Department of Conservation in 1983. I don't have their final report but clearly recall that they responded to our concern that we would remove the license of a spruce budworm spray pilot and the company would simply bring in a replacement who would keep on making violations. A copy of the portion of the resulting 1984 legislation is enclosed and the new designation of a spray contracting firm appears on page 36-1185 and the requirement to be certified appears on page 36-1186.
- This same legislation authorized the Board to initiate rule-making to adopt standards for the certification of spray contracting firms. At the top of page 38-1185 it directed the Board to establish a reasonable fee by regulation. By February 1985, the Board had adopted Chapter 35 (copy enclosed) to further define the requirements for certifying and licensing spray contracting firms. You will see from reading the basis statement that the Board initially proposed setting the license fee at \$5,000.00 to be used to help support monitoring of the budworm programs. However, five people spoke in opposition indicating the fee should only cover administrative costs and it was set at \$100.00. This fee has not been increased since but was doubled when we switched to biennial licenses.
- I looked on the State's web site for Boards and Commissions under the Maine Department of Professional and Financial Regulation. For comparison, the biennial charge for a Master Oil Burner license is \$250.00 while the biennial charges for Master Electricians and Master Plumbers are \$150.00. Apparently they only license individuals and not their companies.
- The original statutory definition of "spray contracting firm" has been expanded in our regulations and you will see in our current Chapter 10 regulations on page 8 (copy enclosed) that the term does not include individuals certified as commercial applicators

providing that individual does not have in his employment one or more others to undertake pesticide applications. The requirement for any incorporated entity to hold a firm license was explained to staff in a 1985 memorandum from the Office of the Attorney General. However, none of us could immediately locate a copy and we requested a new opinion from Mark Randlett, our current Assistant Attorney General. He reconfirms that corporations must hold a spray contracting firm license even if there is only shareholder (copy enclosed).

I hope these documents provide the answers to all your questions. If not, please feel free to contact me again at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Batteese".

Robert I. Batteese, Jr.  
Director

Enclosures (4)